



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 36

RIN 2900-AP25

Loan Guaranty: Adjustable Rate Mortgage Notification Requirements and Look-Back Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) regulations that govern adjustable rate mortgages made in conjunction with the Home Loan Guaranty program. These revisions would align VA's disclosure and interest rate adjustment requirements with the implementing regulations of the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). Specifically, the rule would amend the timing, content, and format requirements for the disclosures provided to borrowers prior to an interest-rate adjustment. The proposed regulation would also require that an interest-rate adjustment correspond with the interest rate index available 45 days prior to the adjustment. This proposed rulemaking would ensure VA's consistency with other applicable consumer finance and housing regulations governing adjustable rate mortgages.

DATES: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP25, Loan Guaranty: Adjustable Rate Mortgage Notification Requirements and Look-Back Period.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov).

FOR FURTHER INFORMATION CONTACT: John Bell III, Assistant Director for Loan Policy (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 632-8786. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA’s regulations governing adjustable rate mortgages are set forth at 38 CFR 36.4312(d). VA proposes two amendments in this rulemaking to ensure VA regulations remain aligned with TILA and the implementing regulations set forth by the CFPB. First, VA proposes amending 38 CFR 36.4312(d)(6) so that the requirements for the disclosures and notifications that must be provided to borrowers prior to an interest-rate adjustment are cross-referenced to those set forth in

the TILA implementing regulations at 12 CFR 1026.20(c) and (d). The requirements of § 1026.20(d) govern an initial interest-rate adjustment, while the requirements in § 1026.20(c) govern subsequent interest-rate adjustments. Second, in an effort to remain consistent with Department of Housing and Urban Development (HUD) regulations, VA would amend 38 CFR 36.4312(d)(2) to require that lenders adjust interest rates based on the most recent interest rate index figure available 45 days prior to the interest rate adjustment, instead of the interest rate index available 30 days prior to the interest rate adjustment, as is currently required in VA's regulations. (In the mortgage industry, the period of time between an interest rate adjustment and the date the interest rate is selected is commonly called the "look-back period.")

#### 2013 TILA Servicing Rule

In addition to the laws and regulations administered by VA, lenders making VA-guaranteed adjustable rate mortgages must comply with TILA and the Real Estate Settlement Procedures Act (RESPA), both of which are administered by CFPB. The changes VA proposes in this rulemaking are necessary to align VA's adjustable rate mortgage regulations with amendments to the regulations implementing TILA that were published in the Federal Register by the CFPB on February 14, 2013 (78 FR 10902), titled "Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)," hereinafter called the "2013 TILA servicing rule".

The 2013 TILA servicing rule revised the requirements of 12 CFR 1026.20(c) and (d) relating to the disclosures and notices that must be provided to borrowers before an adjusted payment is due. Paragraph (c) of section 1026.20 requires that borrowers be

provided certain specific disclosures in connection with an adjustment in the interest rate at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due. In publishing the 2013 TILA servicing rule, CFPB stated in the rule's preamble that 25 days was insufficient notice for borrowers with adjustable rate mortgages to react to increased mortgage payments. See 78 FR 10924. Requiring that lenders provide 60 days' advance notice of a payment increase to borrowers will improve borrowers' ability to better able to manage their finances following the interest rate adjustments. See *id.* CFPB explained that this longer notice period will ensure that borrowers may budget adequately for the increase or pursue loss-mitigation resources that lenders may offer to borrowers facing financial hardship, such as home sale, loan modification, forbearance, deed-in-lieu of foreclosure, or, in particular, refinancing. See 78 FR 10919, 10924. CFPB found that 60 days' notice "more closely reflects the time needed for consumers to refinance a loan." 78 FR at 10924.

Additionally, 12 CFR 1026.20(c) governs the content and format of the disclosures that must be sent to borrowers prior to the periodic interest rate adjustments. Under the revised 12 CFR 1026.20(c), such disclosures must include, amongst other information, the term of the borrower's adjustable rate mortgage, an explanation that the interest rate and mortgage payment will change, and a table displaying relevant information about the borrowers' current and future interest rates and payments. (For the full list of requirements, see 12 CFR 1026.20(c)(2) and (c)(3).) CFPB explained in the rule's preamble that providing borrowers with this information would help them understand that their interest rates were subject to periodic changes and allow them to easily compare current and future payments. See 78 FR 10928-29.

This would enable borrowers to better manage the changes to their mortgage payments. See 78 FR 10902, 10928-29. All of the required disclosures must be in a format substantially similar to the sample formats prescribed in the 2013 TILA servicing rule, which includes sample forms and disclosures. See 78 FR 11009-10.

The 2013 TILA servicing rule also revised 12 CFR 1026.20(d), which provides separate disclosure requirements for the initial interest rate adjustment on an adjustable rate mortgages. This rule requires that the first time an adjustment in the interest rate will cause a change to the monthly payment on an adjustable rate mortgage, borrowers must be provided appropriate disclosures at least 210, but not more than 240, days before the first payment at the adjusted level is due. If the new interest rate (or new payment calculated from the new interest rate) is not known as of the date of the disclosure, § 1026.20(d) provides that an estimate shall be disclosed and labeled as such. Section 1026.20(d) also contains the requirements for the content and format of the initial disclosures. These disclosures, the accompanying information, and any related tables must include details such as, but not limited to, an explanation of the terms of the borrower's adjustable rate mortgage, the effective date of the interest rate adjustment and when additional future interest adjustments are scheduled to occur, and the telephone number of the lender for borrowers to call if they anticipate not being able to make their new payments. (For a full list of requirements, see 12 CFR 1026.20(d)(2).) All disclosures required under 12 CFR 1026.20(d) must be made in a format substantially similar to that prescribed by the 2013 TILA servicing rule, which includes sample formats for such disclosures. See 78 FR 11011-12.

Additionally, the preamble to the 2013 TILA servicing rule explains that adjustable rate mortgages with look-back periods of less than 45 days would not be able to comply with the new 60 day minimum notice requirement for the disclosures regulated under 12 CFR 1026.20(c). See 78 FR 10910. It noted that adjustable rate mortgages guaranteed by VA and insured by FHA had look-back periods of between 15 and 30 days. See 78 FR 10926. In explaining why a 45-day look-back period would be necessary for compliance with the 1026.20(c) minimum 60-day notice requirement, the preamble stated that a look-back period of 45 days would allow lenders to prepare the required interest-rate adjustment documents for borrowers 45 days in advance of the interest rate adjustments. The typical mortgage billing cycle is 30 days, which means that there would be 30 days between the first date the adjusted interest rate would take effect and the date the new payment is due. These combined timeframes would give lenders an estimated 75 days between the date the interest rate index figure is chosen and the date that the borrower's first adjusted payment is due. 78 FR 10924. CFPB explained in the preamble that it had determined 75 days should be sufficient time to prepare the required disclosures and comply with the requirement that borrowers receive notice of the interest-rate adjustment no later than 60 days before their adjusted payments are due. See *id.*

The preamble also explained that a revised look-back period of 45 days would be consistent with the business practices of the majority of adjustable rate mortgage loan servicers, as many utilized a 45 day look-back period even prior to the 2013 TILA servicing rule taking effect. See 78 FR 10924. Further, the preamble described CFPB research showing that changing the length of the look-back period from 30 to 45 days

would not meaningfully affect the way that adjustable rate mortgages are priced at the time of loan origination. See *id.*

Most provisions of the 2013 TILA servicing rule became effective January 10, 2014. However, CFPB delayed the effective date of the notification requirements for VA-guaranteed loans until January 10, 2015, to give VA time to amend its regulations to eliminate the conflicts between VA's existing regulations and the updated TILA implementing regulations. 78 FR 10927. The delayed effective date means that VA adjustable rate mortgages with a note date before January 10, 2015, may comply with VA's current requirements, but any VA-guaranteed loans with a note date on or after January 10, 2015, must comply with the requirements of the 2013 TILA servicing rule.

#### HUD Notice and Look-Back Rule

Loans insured by the Federal Housing Authority (FHA) in HUD must also comply with the 2013 TILA servicing rule as of January 10, 2015. HUD published a final rule on August 26, 2014, at 79 FR 50838, entitled "Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages," hereinafter called the "HUD notice and look-back rule." This rule made two changes to HUD's regulations at 24 CFR 203.49. First, the HUD notice and look-back rule amended 24 CFR 203.49(h) to cross-reference the timing, content, and format requirements of 12 CFR 1026.20(c) and (d) for the disclosures provided to borrowers with adjustable rate mortgages. Second, the HUD notice and look-back rule amended 24 CFR 203.49(d)(2) to implement a 45-day look-back period for all loans originated on

or after January 10, 2015. The final rule adopted the proposed rule (published May 8, 2014, at 79 FR 26376) without change.

In the preamble to its final rule, HUD explained that its proposed rule would revise the look-back period for FHA-insured adjustable rate mortgages from 30 to 45 days, and require that mortgagees of an FHA-insured adjustable rate mortgage provide at least a 60 day, but no more than 120 day, advance notice of an adjustment to a mortgagor's monthly payment. 78 FR 50838. The preamble stated that these changes were made in response to the 2013 TILA servicing rule. *Id.* It explained that the 2013 TILA servicing rule set the adjustable rate notice requirement to a period of between 60 and 120 days before the newly adjusted payment is due and established 45 days as the minimum adjustable rate mortgage look-back period. *Id.* HUD noted that the preamble to the 2013 TILA servicing rule had stated that FHA's 30 day look-back period did not provide sufficient time to notify the mortgagor of an interest rate and monthly payment adjustment. *Id.* In the preamble to the proposed HUD notice and look-back rule, HUD further explained that "[r]evising the current 30-day look-back period to 45 days would enable FHA-approved mortgagees to meet the 60 to 120-day notification period prior to any adjustment to a mortgagor's monthly payment that may occur, as required by the 2013 TILA Servicing Rule." 79 FR 26377.

#### VA's Proposed Rule

To ensure consistency with other Federal housing agency regulations, VA is proposing two amendments to its regulations at 38 CFR 36.4312(d).



#### Section 36.4312(d)(6) Disclosures.

This rulemaking proposes to amend 38 CFR 36.4312(d)(6), which addresses the disclosures and notifications that must be provided to a borrower prior to an interest-rate adjustment. This change would ensure that VA's regulations are consistent with the disclosure and notification requirements published in the 2013 TILA servicing rule by cross-referencing to the timing, content, and format requirements of the CFPB regulations at 12 CFR 1026.20(c) and (d). This cross-reference follows the example of the HUD notice and look-back rule, as set forth at 24 CFR 203.49(h) and explained above.

Specifically, VA proposes changing the title of paragraph (d)(6) from Annual disclosure to Disclosures. This change reflects that, in cross-referencing to the timing, content, and format requirements of 12 CFR 1026.20(c) and (d), VA is regulating both the disclosures provided to borrowers prior to the initial interest-rate adjustment and prior to all subsequent interest-rate adjustments. VA would remove the 25-day notice period and the list of VA-specific disclosures that must be provided to a borrower in current § 36.4312(d)(6). VA would replace this text with a cross-reference to the 2013 TILA servicing rule requirements published at 12 CFR 1026.20(c) and (d) so that proposed § 36.4312(d)(6) would state “[t]he lender must provide the borrower with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 et seq.) at 12 CFR 1026.20(c) and (d). A copy of these disclosures will be made a part of the lender’s permanent record on the loan.”

Cross-referencing to the requirements of 12 CFR 1026.20(c) and (d) would lead to more detailed disclosures than VA currently requires. The first time a change to an interest rate would adjust a monthly payment on a VA-guaranteed adjustable rate mortgage, the lender would be required to provide appropriate disclosures to the borrower at least 210, but not more than 240, days before the first payment at the adjusted level is due. For subsequent changes to interest rates, the lender would need to provide the borrower certain specific disclosures at least 60 days, but not more than 120 days, before the first payment at the adjusted level is due. The content and format requirements for the disclosures can also be found at 12 CFR 1026.20(c) and (d).

By cross-referencing to the timing, content, and format requirements of 12 CFR 1026.20(c) and (d), VA would eliminate any discrepancies in the disclosures required by VA's regulations and the TILA implementing regulations published by CFPB, both of which are applicable to VA-guaranteed mortgages. Additionally, the cross-reference to the TILA requirements would ensure that VA's regulations remain current in the event that CFPB revises 12 CFR 1026.20(c) or (d), without VA having to amend its rule. Further, the cross-reference to 12 CFR 1026.20(c) and (d) would ensure consistency with the HUD notice and look-back rule, which revised 24 CFR 203.49(h) to specifically cross-reference to the disclosure timing, content, and format requirements under 12 CFR 1026.20(c) and (d). This alignment should ensure certainty and simplify any process or system updates required by private industry in response to the 2013 TILA servicing rule.

Section 36.4312(d)(2) Frequency of interest rate changes.

VA would amend 38 CFR 36.4312(d)(2), Frequency of interest rate changes. VA is proposing to remove the last sentence of current § 36.4312(d)(2), which sets a look-back period of 30 days. VA would remove the sentence that states: “[t]he current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.” VA would add two sentences to the end of paragraph (d)(2). The first sentence would clarify that loans with a note date before January 10, 2015, would retain the 30 day look-back period. The next sentence would explain that loans with a note date on or after January 10, 2015, would have a look-back period of 45 days.

The proposed regulation text added to paragraph (d)(2) would state that for loans where the date of the note is before January 10, 2015, the current index figure will be the most recent index figure available 30 days before the date of each interest rate adjustment. It would also state that for loans where the date of the note is on or after January 10, 2015, the current index figure will be the most recent index figure available 45 days before the date of each interest rate adjustment.

VA is proposing to use the term “date of the note” instead of referring to the date of mortgage loan origination because the date of the note is the legal date on which the obligations between the borrower and lender are established. This is a precise date for lenders to track. Accordingly, VA is also proposing to revise the sentence in (d)(2) that currently states “[t]he initial index figure shall be the most recent figure available before the date of mortgage loan origination.” Under the proposed rule, VA would remove the phrase “mortgage loan origination” and replace it with “the note.” The revised sentence

would read: “[t]he initial index figure shall be the most recent figure available before the date of the note.” This change in language is not intended to be substantive, but rather is meant to provide further certainty for lenders determining the regulatory requirements applicable to VA-guaranteed adjustable rate mortgages.

This proposed change to the look-back period would help ensure lender compliance with the 2013 TILA servicing rule 60 day minimum notice requirement before the first adjusted payment is due. This change would also ensure VA regulations remain consistent with other Federal housing agency regulations, thereby adding certainty and clarity for program participants that originate and service VA and FHA-backed adjustable rate mortgages.

As explained above under the heading TILA 2013 Servicing Rule, the 2013 TILA servicing rule has been effective for a large portion of the mortgage market since January 10, 2014. CFPB explained in the preamble to the 2013 TILA servicing rule, however, that it would “grandfather” FHA and VA adjustable rate mortgages with look-back periods of less than 45 days originated prior to one year after the effective date of the final rule. 78 FR 10927. Accordingly, the final rule provides until January 10, 2015, for VA-guaranteed adjustable rate mortgages to satisfy the notice and disclosure requirements of the 2013 TILA servicing rule. See *id.* Since VA is merely conforming its look-back period to accord with TILA, VA is proposing to use the date that is one year after the effective date of the 2013 TILA servicing rule to determine which look-back period should apply to a given loan. For loans where the note is dated before January 10, 2015, the current 30-day period would apply. For loans where the note is dated on or after January 10, 2015 the 45-day look-back period would apply.

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be

found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 to FYTD.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Paperwork Reduction Act

Although this document contains a provision constituting a collection of information at 38 CFR 36.4312(d)(6), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection provisions for this proposed rule are currently approved by OMB and have been assigned OMB control number 3170-0015.

## Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612).

This proposed rule aligns the disclosure and look-back requirements for adjustable rate mortgages to the revised requirements in the 2013 TILA servicing rule. VA does not have discretion not to align these requirements with the new TILA requirements established by CFPB and implemented by CFPB in the 2013 TILA servicing rule. The revised disclosure and look-back requirements would apply to VA adjustable rate mortgages in January 2015, whether or not VA takes action. VA has initiated this rulemaking because it is important for VA regulations to be consistent with TILA. In this rule, VA would adopt the minimum 45 day look-back period to clarify that lenders must meet the TILA minimum requirements governing notification to borrowers. As discussed in this preamble, CFPB noted in its rulemaking that the majority of adjustable rate mortgages in the conventional market have look-back periods of 45 days or longer. With the 2013 TILA servicing rule having taken effect on January 10, 2014, any lenders making adjustable rate mortgages in the conventional market have adjusted to the new TILA requirements. Additionally, the revisions to the disclosure requirements simply conform VA requirements to the 2013 TILA servicing rule and the procedures currently followed in the conventional mortgage lending market.

Accordingly, the Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, under 5

U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document are 64.114, Veterans Housing—Guaranteed and Insured Loans.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on January 23, 2015, for publication



List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: January 26, 2015.

---

William F. Russo,  
Acting Director,  
Office of Regulation Policy & Management,  
Office of the General Counsel,  
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 36 as follows:

#### PART 36— LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

2. Revise § 36.4312(d)(2) and (d)(6) to read as follows:

#### § 36.4312 Interest rates.

\* \* \* \* \*

(d) \* \* \*

(2) Frequency of interest rate changes. Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 36 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of the note. For loans where the date of the note is before January 10, 2015, the current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment. For loans where the

date of the note is on or after January 10, 2015, the current index figure shall be the most recent index figure available 45 days before the date of each interest rate adjustment.

\* \* \* \* \*

(6) Disclosures. The lender must provide the borrower with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 et seq.) at 12 CFR 1026.20(c) and (d). A copy of these disclosures will be made a part of the lender's permanent record on the loan.

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection requirements in this section under control number 3170-0015.)

[FR Doc. 2015-01681 Filed 01/28/2015 at 8:45 am; Publication Date: 01/29/2015]